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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

KELLY TOYS HOLDINGS, LLC;
JAZWARES, LLC; KELLY
AMUSEMENT HOLDINGS, LLC;
and JAZPLUS, LLC,

Plaintiffs,

vs.

BUILD-A-BEAR WORKSHOP,
INC.,

Defendant.

Case No. 2:24-cv-01169-JLS-MAR

**DECLARATION OF MICHAEL J.
HICKEY IN SUPPORT OF BUILD-A-
BEAR WORKSHOP, INC.'S
MOTION TO DISMISS UNDER
FRCP 12(b)(6)**

Date: May 10, 2024

Time: 10:30 a.m.

Place: Honorable Josephine L. Staton
Courtroom 8A

1 I, Michael J. Hickey, declare as follows:

2 1. My name is Michael J. Hickey. I am over twenty-one years of age. I am
3 a partner with the law firm of Lewis Rice LLC and counsel of record for Defendant
4 Build-A-Bear Workshop, Inc. ("Build-A-Bear") in the above-captioned matter.
5 I have personal knowledge of the facts set forth below, and, if called upon as a
6 witness, I could and would testify to such facts under oath.

7 2. I make this declaration in support of Defendant Build-A-Bear's Motion
8 to Dismiss under Federal Rule of Civil Procedure 12(b)(6) in the above-captioned
9 matter.

10 3. On February 27, 2024, counsel for Plaintiffs and counsel for Build-A-
11 Bear conducted a conference pursuant to Local Rule 7-3.

12 4. On February 28, 2024, counsel for Plaintiffs sent a follow-up
13 communication to counsel for Build-A-Bear via electronic mail.

14 5. During the February 27, 2024 conference and February 28, 2024 e-mail,
15 counsel for Plaintiffs conceded: (1) Plaintiffs do not have federally registered trade
16 dress rights or a pending trade dress application for the Squishmallows product line;
17 (2) only Plaintiff Kelly Toys Holdings, LLC has standing to pursue Plaintiffs' Third
18 Cause of Action; and (3) Plaintiffs' common law and California statutory unfair
19 competition claims are preempted to the extent they are based on Plaintiffs' purported
20 copyrighted works relied upon in their federal copyright claim.

21 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
22 foregoing is true and correct.

23 Executed this 5th day of March, 2024

24 By: /s/ Michael J. Hickey

25 Michael J. Hickey, applying *Pro Hac Vice*

26 *Attorneys for Defendant Build-A-Bear*
27 *Workshop, Inc.*